

June 6, 1999
Mr. Tim Luke
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

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Department of Water Resources

Dear Mr. Luke:

Please refer to the attached letter to Mr. Norm Young concerning our position on the recently received (June 4) pending Notice of Violation. Follows are comments on the received "Guidance for Distribution of Alder Creek Water Rights and Flows, Water District 34":

- 1) Stated on page 2, 1A: "Alder Creek is considered a tributary...." This should say: "Alder Creek is a tributary of the Big Lost River and is to be administered in priority with the Big Lost River." -My point is that regardless of any "futile call", Big Lost River water rights with prior ~~date~~ need to be filled before any Alder Creek junior rights come into play. ~~There~~ are numerous Big Lost River rights on the Darlington ditch and in the Big ~~Lost~~ River that have priority over the Alder Creek junior rights. Once Alder Creek reaches the Big Lost River distribution system, (Darlington ditch) it is a BLR right (as far as priority date) with an added restriction; it must also originate from Alder Creek. Thus, even during a futile call (from Darlington ditch to the river) ~~a~~ 1927 BLR water right has priority to Alder Creek water usage out of the Darlington ditch over a 1928 Alder Creek water right.
- 2) The above comment (1) pertains to other areas of the respective document. Page 4, 2A b), should be "Fill all the BLR and Alder Creek rights on the Darlington Ditch to the extent possible according to priority. "

Note: the above two comments are in reaction to Doug Rosenkrance's repeated illegal declaration of "futile call" for Alder Creek flow past the Darlington ditch, over the last decade, so that his son could use the water, generally without a right. IDWR did award this watermaster's son a 1928 Alder Creek right, based on false claims, in 1992. Now, IDWR is trying to strengthen this "flood water" claim by re-defining "tributary". The fact is, this new definition is being made to appease this "favorite son" watermaster, at the expense of all legitimate holders of BLR water rights with dates prior to 1928. Certainly, issue of this 1928 Alder Creek right was not originally objected to because, by definition, it is essentially worthless. Now, however, with this new self-serving definition, this 1928 right is being elevated above even earlier BLR rights. If this after-the-fact tributary priority is put in place, I demand that this 1928 Alder Creek right be revoked and opened up to new objection.

In reality, futile call should not come into play. I have personally witnessed minor amounts of Alder Creek water flowing from the Darlington ditch to the Vanous ditch with no noticeable shrink. Additionally, the distance the water has to flow to the river is less than half the distance required to flow to the diversion on the property of the watermaster's son. Despite these obvious physical restrictions, IDWR opens the door for further Rosenkrance self-serving abuse of power. Be assured, "futile call" will be the first thing Rosenkrance declares when his son is not receiving full water, if this new definition is put in place.

- 3) I strongly object to Rosenkrance having anything to do with making any determination of futile call. Based on past experience, his obvious conflict of interest, and his pseudo-scientific (self-serving) judgement, I am certain that he can not make a realistic determination. In addition, regardless of Rosenkrance's past "historical practice" of making the futile call determination on his own without notifying anyone, it is not legal for him to make this call.
- 4) Pages 4-5, 2B: The "watermaster's measurements" are discussed above. Additionally, this greater than 50% loss needs to be compared directly with the loss attained when the water is traveling twice the distance to the river in order to Shane Rosenkrance's diversion. Only when that loss is considerably less than any loss to the river, is a futile call justified.
- 5) Page 6, Section G: What a weak statement! Why don't you simply come out and say that as far as the IDWR is concerned, the watermaster can do as he pleases. This wishy-washy "you may do this, and you might do that" may just as well be left out. The fact is, whatever slap on the hand delivered to Rosenkrance (for his documented continued years of abuse) had absolutely no effect. His unlawful approvals and blatantly biased water distribution resumed immediately this year. IDWR, after choosing to do nothing other than dream up excuses for Rosenkrance's behavior, now proposes an equally biased document for distribution of Alder Creek. This entire document smells of favoritism for this "favorite son" watermaster.
- 6) Pages 6, 2.: Exclusion of a permanent measuring water at the Alder Creek-Darlington Ditch confluence, or at any of the other areas of concern, is unacceptable. I demand that all other parties involved are required to install the same type measuring devices, with the same degrees of accuracy, as I am. I also insist that the Alder Creek flow into and out of Darlington ditch is measured permanently (at least during the entire irrigation season), and again

to the same accuracy as required by me. I also insist that the people "benefiting" from these measuring devices be required to completely pay for them, as is required of me. As past experience proves, giving Rosenkrance any opportunity to make a judgement or estimate will result in whatever benefits him, his family, or friends, regardless of what the truth really is.

Regarding your mention of a Mr. King from IDWR coming out to BLR valley to check out the situation, please notify me in advance so I also have an opportunity to explain my position and voice my complaints. Please note that I will need at least one day notice.

Sincerely,



John McCray
3470 Cobblestone Lane
Idaho Falls, Idaho 83404

Wk phone: 526-3745
Home phone: 524-4985

Attachment